

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Natnari Linwong	Team: Team # 2	CCRB Case #: 201115765	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sat, 12/03/2011 3:30 AM	Location of Incident: [REDACTED]		Precinct: 101	S.O.L. Expires: 06/03/2013	
Date/Time CV Reported Thu, 12/08/2011 1:06 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/08/2011 1:06 PM		

Complainant/Victim	Type	Home Address		
1. [REDACTED]	[REDACTED]	[REDACTED]		
2. [REDACTED]	[REDACTED]	[REDACTED]		

Subject Officer(s)	Shield	TaxID	Command
1. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. SGT Donald Schneider	02141	929147	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
A . SGT Donald Schneider	[REDACTED]	A . [REDACTED]
B . SGT Donald Schneider	[REDACTED]	B . [REDACTED]
C . [REDACTED]	[REDACTED]	C . [REDACTED]
D . [REDACTED]	[REDACTED]	D . [REDACTED]
E . SGT Donald Schneider	Abuse of Authority: Sergeant Donald Schneider supervised the search of the car in which [REDACTED] and [REDACTED] were occupants.	E . Substantiated
F . SGT Donald Schneider	Other: Sergeant Donald Schneider failed to ensure that stop-and-frisk reports were prepared as required by Patrol Guide Section 212-11.	F . Other Misconduct

### Case Summary

[REDACTED] called the CCRB on December 8, 2011, to file the following complaint (encl. 1A-F).

On December 3, 2011, at approximately 3:30 a.m., Mr. [REDACTED] and his son, [REDACTED] were stopped in Mr. [REDACTED]'s vehicle on [REDACTED] in Queens by Sergeant Donald Schneider, Officer [REDACTED], Officer [REDACTED] and Officer [REDACTED]. No arrests were made or summonses issued. The following allegations resulted from the encounter:

- **Allegation A – Abuse of Authority: Sergeant Donald Schneider supervised the stop of the car in which [REDACTED] and [REDACTED] were occupants.**  
The investigation determined that the stop of Mr. [REDACTED]'s vehicle was lawful. It is therefore recommended that **Allegation A** be closed as **exonerated**.
- **Allegation B – Discourtesy: Sergeant Donald Schneider spoke rudely to [REDACTED]**  
[REDACTED]  
**Allegation C – Discourtesy: Officer [REDACTED] spoke rudely to [REDACTED]**  
The investigation determined that the use of profanity by Sergeant Schneider and Officer [REDACTED] served the lawful purpose of gaining compliance. It is therefore recommended that **Allegations B and C** be closed as **exonerated**.
- **Allegation D – Abuse of Authority: Officer [REDACTED] threatened [REDACTED] and [REDACTED] with the use of force.**  
There is insufficient evidence to determine whether Officer [REDACTED] threatened the individuals with the use of force. It is therefore recommended that **Allegation D** be closed as **unsubstantiated**.
- **Allegation E – Abuse of Authority: Sergeant Donald Schneider supervised the search of the car in which [REDACTED] and [REDACTED] were occupants.**  
The investigation determined by a preponderance of the evidence that the car search was conducted without probable cause. It is therefore recommended that **Allegation E** be closed as **substantiated**.
- **Allegation F – Other: Sergeant Donald Schneider failed to ensure that stop-and-frisk reports were prepared as required by Patrol Guide Section 212-11.**  
The investigation determined that Sergeant Schneider failed to ensure that stop-and-frisk reports were prepared for the incident. It is recommended that he be cited for **other misconduct**.

Mediation was offered to Mr. [REDACTED] on December 13, 2011, but he rejected it. This case was initially assigned to Investigator Souad Moussawi. It was reassigned to Investigator Natnari Linwong for purposes of closure upon Investigator Moussawi's resignation.

## Results of Investigation

### Civilian Statements

#### **Complainant/Victim:** [REDACTED]

- Black male, age 57, 6'0" tall and 270 lbs.
- Currently unemployed.

Mr. [REDACTED] was interviewed at the CCRB on January 3, 2012 (encl. 3A-E).

On December 3, 2011, at approximately 3:30 a.m., Mr. [REDACTED] and his son, [REDACTED] were driving in Mr. [REDACTED]'s 2003 black Mercury Mountaineer (license plate #DZZ8119) along Central Avenue in Queens. They were going to pick up newspapers for a paper route.

As they drove, Mr. [REDACTED] noticed that a police vehicle was trailing behind them for several blocks. When Mr. [REDACTED] stopped at a red light at [REDACTED] approximately four marked police sedans stopped them from all directions. One of the vehicles belonged to the Nassau County Police Department. Approximately two uniformed officers stepped out of each vehicle with guns drawn and pointed at the [REDACTED]

Officer [REDACTED] and several other officers approached the vehicle. Officer [REDACTED] who Mr. [REDACTED] identified via his nameplate, approached the front passenger door with his gun pointed at Mr. [REDACTED]'s face. He asked Mr. [REDACTED] to put his hands up and open the door. Mr. [REDACTED] did not want to bring his hands down to open the door and therefore did not comply. Officer [REDACTED] then opened the door, grabbed Mr. [REDACTED] by his coat and placed him on the floor. He placed his knee on Mr. [REDACTED]'s back and handcuffed him. Initially, Mr. [REDACTED] stated that when he asked why he was being arrested, Officer [REDACTED] told him to get the "fuck" out of the car and to "shut his mouth" or he would blow his "fucking" brains out. However, after further questioning, Mr. [REDACTED] stated that Officer [REDACTED] told him not to move or he would blow his "fucking" brains out prior to removing him from the vehicle. Mr. [REDACTED] did not state that any threats of force were made against Mr. [REDACTED]

After being handcuffed, Mr. [REDACTED] asked what he and his son had done. Officer [REDACTED] told him he would find out later. Officer [REDACTED] placed Mr. [REDACTED] on the hood of one of the patrol vehicles. Mr. [REDACTED] was handcuffed and seated on the curb. Officer [REDACTED] and Sergeant Ronald Schneider, who Mr. [REDACTED] identified via their nameplates, were also present at the scene of the incident. Mr. [REDACTED] did not know the names of the other officers on scene and could not describe them.

An unidentified male officer told Mr. [REDACTED] that a search for his license plate came back as being registered to a Toyota, not a Mercury. Officers also told Mr. [REDACTED] that his vehicle fit the description of a car suspected of carrying machine guns.

Several officers searched Mr. [REDACTED]'s vehicle for approximately 25 minutes. They entered through all of its doors and the trunk. After nothing was recovered from the search, the officers apologized and released the [REDACTED] without arresting them or issuing them summonses. Since the incident, Mr. [REDACTED] has experienced hip pain, but has not sought medical treatment.

**Victim:** [REDACTED]

- 29-year-old black male, 6'2" tall and 275 pounds.
- Currently unemployed.

Mr. [REDACTED] was interviewed at the CCRB on January 25, 2012 (encl. 4A-E). His statement was consistent with that of Mr. [REDACTED] with the following exceptions noted below:

After stopping at a light, officers exited their vehicle with their guns pointed at Mr. [REDACTED]'s head. Officer [REDACTED] and the officers in the vehicle with Officer [REDACTED] (both identified via nameplate) repeatedly yelled for Mr. [REDACTED] and Mr. [REDACTED] to "get the fuck out of the car." Mr. [REDACTED] turned off his vehicle. The officers told the [REDACTED] to put their hands outside the windows. Mr. [REDACTED] complied and then opened the door. Officers approached the [REDACTED] with their guns drawn and ordered them out of the car, and they complied. Officer [REDACTED] then told Mr. [REDACTED] "Get the fuck on the ground." Officer [REDACTED] had a gun to Mr. [REDACTED]'s head while he was being handcuffed on the ground. He told Mr. [REDACTED] not to move or he would blow his "fucking brains out." Mr. [REDACTED] did not state that any threats of force were made against Mr. [REDACTED]

Approximately five to six other patrol cars from the NYPD and the Nassau County Police Department arrived. Officer [REDACTED] handcuffed Mr. [REDACTED] with the assistance of an unidentified officer. They escorted Mr. [REDACTED] to the sidewalk and shoved him onto it, where he landed in a seated position. Mr. [REDACTED] did not know which officers approached his father's side of the vehicle. Mr. [REDACTED] was handcuffed by unknown officers and shoved to the ground, chest first, and taken to the opposite side of the car where Mr. [REDACTED] could not see him. Mr. [REDACTED] heard his father yell that he had a bad hip.

Officer [REDACTED] Officer [REDACTED] and an unidentified uniformed white male officer then searched Mr. [REDACTED]'s vehicle for approximately fifteen minutes. The entire vehicle was searched, including the trunk, which could be accessed from the interior of the vehicle. The officers had not said anything to Mr. [REDACTED] at this point and had not asked him for his ID. Following the car search, an unidentified officer undid Mr. [REDACTED]'s handcuffs and requested his ID. This officer left but soon returned, stating that the [REDACTED] were stopped because of a report of a black SUV with two black males inside in possession of a machine gun. Officer [REDACTED] told Mr. [REDACTED] that when he ran the plates of his vehicle, it came back registered to another vehicle.

**NYPD Statements:**

**Subject Officer: OFFICER [REDACTED]**

- 29-year-old white male, 6'0" tall and 220 lbs. with brown hair and eyes.
- Officer [REDACTED] worked from 11:15 p.m. on December 2, 2011 to 7:50 a.m. on December 3, 2011 with Officer [REDACTED]. They were dressed in uniform and assigned to patrol sector D in marked patrol vehicle # 3472.

**Memo Book**

At 3:05 a.m., car stop in regards to Nassau carjacking following black Mercury Mountaineer. Central provided rolling plate check #DZZ8119. Vehicle came back to blue Toyota (2-door). Felony car stop, two black males, possibly armed, matching Nassau's description. Defendant [REDACTED] DOB 1/10/83. Crime report prepared, no arrest. Nassau show up yielded negative results.

**CCRB Statement**

Officer [REDACTED] was interviewed at the CCRB on March 15, 2012 (encl. 6A-E).

On December 3, 2011, at approximately 3:30 a.m., Officer [REDACTED] and Officer [REDACTED] were patrolling on Beach 36th Street and Edgemere Avenue in Queens when they received a radio call regarding an armed carjacking in Nassau County headed to Queens. The suspects were two male blacks in a black Mercury Mountaineer. One suspect was carrying a pistol and the other an Uzi machine gun.

Approximately two minutes after this call, a black Mountaineer drove by Officer [REDACTED] and Officer [REDACTED] with two black males in the vehicle. Officer [REDACTED] and Officer [REDACTED] followed the vehicle for three minutes at a distance of 25 yards. Officer [REDACTED] confirmed the information with the dispatcher, which matched Mr. [REDACTED]'s car. The dispatcher did not have the license plate of the stolen vehicle but did ask the dispatcher to run the license plate of Mr. [REDACTED]'s vehicle. The vehicle came back registered to a two-door Toyota. Officer [REDACTED] assumed that the license plates must have been switched. Officer [REDACTED] radioed that they were following possible suspects of the carjacking and stated their location. Sergeant Schneider went over the air and stated that he would cut them off at [REDACTED]

The Mountaineer reached a red light at [REDACTED] in Queens. Officer [REDACTED] and Officer [REDACTED] remained 25 yards behind them because of the weapons they could possibly have in the car. Officer [REDACTED] and Officer [REDACTED] did not give any orders over the loudspeaker. They put their sirens on once Sergeant Schneider arrived at the location. Sergeant Schneider cut the Mountaineer off using lights and sirens. The officers exited their vehicles. Officer [REDACTED] drew his gun, pointed it at Mr. [REDACTED] and approached the Mountaineer. Officer [REDACTED] also approached the Mountaineer.

Officer [REDACTED] did not recall if Officer [REDACTED] gun was drawn. He did not recall if Officer [REDACTED] or Sergeant Schneider had their guns drawn or pointed. Officer [REDACTED] was not paying attention to anything but Mr. [REDACTED] and was uncertain where Sergeant Schneider and Officer [REDACTED] were positioned at this point, but believed that they approached the passenger side of the vehicle. He loudly and repeatedly ordered Mr. [REDACTED] to show his hands. Mr. [REDACTED] complied and put his hands out of the window. Officer [REDACTED] saw that Mr. [REDACTED] had no weapons in his hands and ordered him to exit the vehicle, and Mr. [REDACTED] complied. Officer [REDACTED] then ordered Mr. [REDACTED] to walk towards him and lay face-down on the ground, which he did.

When Officer [REDACTED] saw that there were no people in the vehicle other than Mr. [REDACTED] and Mr. [REDACTED] he put his gun away and handcuffed Mr. [REDACTED]. He did not receive assistance in handcuffing Mr. [REDACTED]. He took Mr. [REDACTED] and placed him on the sidewalk. Mr. [REDACTED] was also placed on the sidewalk nearby. Officer [REDACTED] did not recall which officers were with Mr. [REDACTED]. He recalled that there were other officers on the scene at this point but did not recall who they were.

Officer [REDACTED] explained the stop to Mr. [REDACTED] and asked him if he had weapons in his vehicle. Mr. [REDACTED] said he was fine with the stop and did not have weapons in the vehicle, and told Officer [REDACTED] that the officers could search his vehicle. Officer [REDACTED] and Officer [REDACTED] searched all areas reachable from the front seats and did not recover any weapons. Officer [REDACTED] searched the driver's side and Officer [REDACTED] searched the passenger side. Officer [REDACTED] did not recall any other officers searching the vehicle. Officer [REDACTED] then called the dispatcher again and asked her

to repeat the license plate number of the vehicle she ran. She did, and it turned out that she ran the wrong plate number. Nassau County police also arrived and confirmed that Mr. [REDACTED] and Mr. [REDACTED] were not the suspects they were looking for. Mr. [REDACTED] was calm and compliant throughout the incident.

Officer [REDACTED] never threatened either Mr. [REDACTED] or Mr. [REDACTED] with force. He did not say, "Get the fuck out of the car" and did not tell either man that he would "blow their fucking brains out." Officer [REDACTED] did not deal with Mr. [REDACTED] he only spoke with Mr. [REDACTED]

**Witness Officer: OFFICER [REDACTED]**

- *White male, age 30, 6'4" tall and 210 lbs. with brown hair and green eyes.*
- *Officer [REDACTED] worked with Officer [REDACTED] from 11:15 p.m. on December 2, 2011 to 7:50 a.m. on December 3, 2011. They were assigned to patrol sector D and they were uniformed and in a marked patrol vehicle which was operated by Officer [REDACTED]*

**Memo Book**

At 3:05 a.m., car stop in regards to a Nassau carjacking. Followed black Mercury Mountaineer. Central did rolling plate check of #DZZ8119. Came back to a blue Toyota. Performed felony car stop at Central city line. Two male blacks possibly armed matching Nassau description, Nassau responded. [REDACTED] 150 13 East 115<sup>th</sup> Street, Apt. 6, Rockaway, New York 11950. Nassau show-up, wrong car – negative show-up. At 3:35 a.m., prepared stop-and-frisk report. Sprint 2057.

**CCRB Statement**

Officer [REDACTED] was interviewed at the CCRB on April 17, 2012 (encl. 7A-D). Officer [REDACTED] statement was consistent with Officer [REDACTED] statement with the exception of the following:

Officer [REDACTED] and Officer [REDACTED] exited their vehicle. Officer [REDACTED] had his gun drawn and approached Mr. [REDACTED] the passenger of the vehicle, with his gun pointed at Mr. [REDACTED]. He asked Mr. [REDACTED] to exit the vehicle and get on the ground. Mr. [REDACTED] immediately complied. No other officers approached the passenger side of the vehicle with Officer [REDACTED]. Officer [REDACTED] did not recall any officers helping him with Mr. [REDACTED]. Officer [REDACTED] did not recall whether the other officers had guns drawn. Officer [REDACTED] handcuffed Mr. [REDACTED] and only holstered his gun once he finished cuffing him. Officer [REDACTED] did not have his gun on Mr. [REDACTED]'s head at any point but did have his gun pointed at Mr. [REDACTED]. Officer [REDACTED] did not see what happened on the driver's side of the vehicle.

Officer [REDACTED] did not ask Mr. [REDACTED] or Mr. [REDACTED] for permission to search their vehicle and did not hear either of them provide permission to search their vehicle. Officer [REDACTED] did not know if the civilians gave any other officers permission to search the vehicle. Officer [REDACTED] and Officer [REDACTED] took initiative to search the vehicle in order to ensure that there were no weapons or additional passengers inside. Sergeant Schneider did not make the decision to search the vehicle. Officer [REDACTED] searched the passenger side and Officer [REDACTED] searched the driver's side. Officer [REDACTED] searched areas which were reachable from the front passenger seat. He did not search any compartments or the back of the vehicle.

Officer [REDACTED] did not threaten either of the civilians with the use of force, including shooting them, and did not recall hearing any other officers do so. Officer [REDACTED] did not curse at the civilians and did not hear any other officers do so. He stated he did not hear what the officers said

because he was focused on Mr. [REDACTED] Officer [REDACTED] prepared a stop-and-frisk report for Mr. [REDACTED]

**Subject Officer: SERGEANT DONALD SCHNEIDER**

- *White male, age 32, 5'11" tall and 260 lbs. with brown hair and eyes.*
- *Sergeant Schneider worked from 11:05 p.m. on December 2, 2011 to 8:02 a.m. on December 3, 2011. He was the patrol supervisor and worked with Officer [REDACTED]. They were dressed in uniform and assigned to a marked patrol car.*

**Memo Book**

At 3:05 a.m., assist officers at 878 Empire Avenue regarding possible vehicle from a carjacking involving two firearms. At 3:23 a.m., Sector David (Officer [REDACTED] and Officer [REDACTED] prepared a stop-and-frisk report.

**CCRB Statement**

Sergeant Schneider was interviewed at the CCRB on March 20, 2012 (encl. 5A-E). Sergeant Schneider provided a statement consistent with that of Officer [REDACTED] with the exception of the following:

Sergeant Schneider cut the black Mountaineer off at [REDACTED]. The car was in the middle lane of a three-lane roadway. Sergeant Schneider and Officer [REDACTED] stopped approximately 40 to 50 feet ahead of the Mountaineer and Officer [REDACTED] and Officer [REDACTED] stopped approximately 100 feet away behind Sergeant Schneider's vehicle. Officer [REDACTED] and Officer [REDACTED] exited their vehicle as Sergeant Schneider and Officer [REDACTED] did.

Sergeant Schneider approached the passenger side of the vehicle with his gun drawn. The gun was pointed in the general direction of the occupants of the vehicle but not specifically at either one of them. It was dark at this point and thus Sergeant Schneider did not have a clear view inside the vehicle. Initially, Sergeant Schneider stated that he took both the driver and passenger out of the vehicle at gunpoint. After further questioning, Sergeant Schneider stated that he holstered his gun within three seconds of reaching the passenger side of the vehicle and opened the vehicle door. An unknown officer arrived at this point and took Mr. [REDACTED] out of the vehicle and handcuffed him. Sergeant Schneider then walked to the driver's side of the vehicle.

Sergeant Schneider asked Mr. [REDACTED] to exit his vehicle but he was hesitant to get out of the vehicle. It appeared as though it took Mr. [REDACTED] three to five seconds to understand the command, at which point he exited the vehicle. When Mr. [REDACTED] exited the vehicle, Sergeant Schneider asked him to get on the ground. Mr. [REDACTED] complied and an officer handcuffed him. Sergeant Schneider did not place Mr. [REDACTED] on the ground. Mr. [REDACTED] did not complain about any pain or other problems that resulted from his descent to the ground. Mr. [REDACTED] only stated that he was a retired corrections officer and that he intended to file a complaint. Sergeant Schneider believed he might have handcuffed Mr. [REDACTED]. He brought Mr. [REDACTED] up and placed him on the curb. Sergeant Schneider did not recall where Officer [REDACTED] was at this point.

Officers searched the general area in which Mr. [REDACTED] and Mr. [REDACTED] were sitting in the vehicle and any areas they could reach from their positions. The search was for the machine gun and hand gun. The search was conducted based on the carjacking call and the fact that the [REDACTED] matched the description provided in the call. There were no other factors that led to the search of the vehicle. Sergeant Schneider did not speak to the [REDACTED] about searching the vehicle prior to

the search. Sergeant Schneider did not participate in the search of the vehicle and did not recall which officers did.

Sergeant Schneider did not curse at either of the [REDACTED] threaten to shoot them, or make any threats of force, and did not hear any other officers do so. Nassau County police later arrived and confirmed that the [REDACTED] vehicle was not the stolen vehicle and that they were not the assailants. Sergeant Schneider apologized to Mr. [REDACTED] and Mr. [REDACTED]. Mr. [REDACTED] accepted the apology; Mr. [REDACTED] did not.

**Witness Officer: OFFICER [REDACTED]**

- *Asian female, age, 26, 5'6" tall and 135 lbs. with black hair and brown eyes.*
- *Officer [REDACTED] worked as Sergeant Schneider's operator from 11:15 p.m. on December 2, 2011, to 7:50 a.m. on the following day. She was dressed in uniform and assigned to marked vehicle #5333.*

**Memo Book**

At 3:05 a.m., assist MOS at 787 and Empire. At 3:23 a.m., stop-and-frisk report prepared by Officer [REDACTED]

**CCRB Statement**

Officer [REDACTED] was interviewed at the CCRB on February 24, 2012 (encl. 8A-F). Her statement was consistent with Officer [REDACTED] testimony with the following exceptions and additions:

Upon arriving at the scene, Officer [REDACTED] observed Mr. [REDACTED]'s vehicle already stopped by Officer [REDACTED] and Officer [REDACTED]. Officer [REDACTED] vehicle was parked behind Mr. [REDACTED]'s vehicle. Officer [REDACTED] did not recall which officer approached which side of the vehicle, but one approached the passenger and the other approached the driver's side as she arrived at the location.

Mr. [REDACTED] was exiting his vehicle as Officer [REDACTED] approached the driver's side of the vehicle with her gun drawn. Her gun was pointed at the floor. Sergeant Schneider approached the passenger door with his gun also drawn. Officer [REDACTED] did not know where his gun was pointed. Officer [REDACTED] and Officer [REDACTED] also had their guns drawn, but Officer [REDACTED] did not know where the guns were pointed.

Officer [REDACTED] did not hear any officers curse at Mr. [REDACTED] or Mr. [REDACTED] and did not do so herself. Officer [REDACTED] did not threaten either man with force and did not hear any other officer do so. She attempted to handcuff Mr. [REDACTED] and received help from another officer who arrived at the scene at this point. She did not recall who this officer was. Mr. [REDACTED] did not resist arrest. Officer [REDACTED] did not observe what happened with Mr. [REDACTED] and was not sure what other officers arrived at the location.

Officer [REDACTED] did not search or frisk either of the civilians. Officer [REDACTED] frisked Mr. [REDACTED] either before or after he was handcuffed. Officer [REDACTED] did not know if Officer [REDACTED] searched Mr. [REDACTED]. Officer [REDACTED] did not observe Mr. [REDACTED] being searched or frisked.

Officer [REDACTED] then placed Mr. [REDACTED] on the hood of a patrol car until Nassau County police officers arrived five minutes later. The [REDACTED] did not understand why they were stopped and the officers attempted to explain it to them. Officer [REDACTED] was not sure if Mr. [REDACTED] was

vehicle was searched. There was no force used against the civilians other than what Officer [REDACTED] described.

#### **Officers Not Interviewed**

The Nassau County officers did not arrive on scene until after the alleged misconduct occurred. They were not interviewed because their statements would not have affected the recommended disposition of the case.

#### **NYPD Documents**

##### **SPRINT (encl. 10A-C, 16E)**

There is no record of a SPRINT report in the NYPD system for this incident or the carjacking. The Nassau County Police Department was contacted with regard to any SPRINT about this incident and the carjacking. They stated they did not have any such report on file.

##### **Stop-and-Frisk Report/Log (encl. 11A)**

No stop-and-frisk reports were filed for this incident.

##### **MISD/Warrant Check (encl. 9A-B)**

There were no records of any officers other than Sergeant Schneider conducting warrant checks on Mr. [REDACTED]'s vehicle on the date of the incident.

#### **Status of Civil Proceedings (encl. 12A)**

Neither Mr. [REDACTED] nor Mr. [REDACTED] have filed a Notice of Claim with the City of New York as of April 20, 2012, with regard to the incident.

#### **Civilians' Criminal Histories (encl. 13A-B)**

As of August 21, 2012, Office of Court Administration records reveal no criminal convictions for either Mr. [REDACTED] or Mr. [REDACTED].

#### **Civilians' CCRB Histories (encl. 1E-F)**

Neither Mr. [REDACTED] nor Mr. [REDACTED] has filed any prior CCRB complaints.

#### **Subject Officers' CCRB Histories (encl. 1A-D)**

- Sergeant Schneider has been a member of the service for 11 years and there are no substantiated CCRB allegations against him.
- Officer [REDACTED] has been a member of the service for four years and there are no substantiated CCRB allegations against him.

#### **Conclusion**

#### **Allegations Not Pleaded**

Mr. [REDACTED] and Mr. [REDACTED] alleged that officers pointed their guns at them in the process of conducting the stop of their vehicle. As the officers drew their guns in the course of a potentially dangerous car stop, in which they reasonably suspected that guns were involved, this allegation was subsumed within the stop allegation.

While discussed in the analysis below for purposes of establishing inconsistency in statements, Mr. [REDACTED]'s allegation that Sergeant Schneider spoke courteously to Mr. [REDACTED] is not pleaded, as Mr. [REDACTED] did not corroborate the allegation.

### **Identification of Subject Officers**

- Sergeant Schneider acknowledged that he was the supervisor on scene during the vehicle stop and search. Therefore, Allegations A and E are pleaded against him.
- Mr. [REDACTED] and Mr. [REDACTED] alleged that Sergeant Schneider and Officer [REDACTED] used profanity towards them, and that Officer [REDACTED] threatened them with the use of force. Therefore, Allegation B is pleaded against Sergeant Schneider, and Allegations C and D are pleaded against Officer [REDACTED]

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: Sergeant Donald Schneider supervised the stop of the car in which [REDACTED] and [REDACTED] were occupants.**

It is undisputed that Sergeant Schneider, Officer [REDACTED] Officer [REDACTED] and Officer [REDACTED] conducted the vehicle stop, and that all of these officers had their guns drawn during the stop. Officer [REDACTED] Officer [REDACTED] and Sergeant Schneider acknowledged pointing their guns at [REDACTED] and [REDACTED]. It is disputed whether Officer [REDACTED] pointed her gun at [REDACTED] and [REDACTED].

According to the officers, prior to this stop, two black males carjacked a black Mercury Mountaineer using a machine gun and a handgun in the vicinity of the car stop. While no SPRINT report regarding this incident could be found, the officers' testimonies regarding the carjacking were consistent and were corroborated by their memo book entries. The investigation therefore credits the officers' claim that they had received information regarding an armed carjacking.

The police may stop a vehicle based upon a reasonable suspicion that its driver or occupants have committed, are committing, or are about to commit a crime. People v. Black, 851 N.Y.S.2d 757 (2008) (encl. 0A-B). An officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another's personal safety. NYPD v. Gliner, OATH Index 955/00 (encl. 0C-V).

As two black males inside a black Mercury Mountaineer, Mr. [REDACTED] and Mr. [REDACTED] closely matched the description of the alleged carjackers. Additionally, Officer [REDACTED] ordered a rolling check of the license plate of Mr. [REDACTED]'s vehicle and this check indicated that the plate number belonged to a different type of vehicle, further increasing the officers' suspicions. Based on the information the officers had received, they had reasonable suspicion that Mr. [REDACTED] and Mr. [REDACTED] were involved in some form of criminal activity. These factors also provided the officers with reasonable fear for their personal safety upon conducting the stop, thus legitimizing any drawing or pointing of guns that may have occurred.

The investigation therefore determined that the officers had the reasonable suspicion required to conduct the vehicle stop. It is recommended that **Allegation A** be closed as **exonerated**.

#### **Allegation B – Discourtesy: Sergeant Donald Schneider spoke rudely to [REDACTED]**

#### **Allegation C – Discourtesy: Officer [REDACTED] spoke rudely to [REDACTED] and [REDACTED]**

Mr. [REDACTED] alleged that upon stopping his vehicle, Sergeant Schneider and Officer [REDACTED] repeatedly told him and Mr. [REDACTED] "Get the fuck out of the car." Mr. [REDACTED] further alleged

that Officer [REDACTED] then told him, "Get the fuck on the ground." Mr. [REDACTED] stated that Officer [REDACTED] told him, "Get the fuck out of the car," but did not make any additional allegations of courtesy against Officer [REDACTED]. He did not make any courtesy allegations against Sergeant Schneider. Both Sergeant Schneider and Officer [REDACTED] denied cursing at the civilians, and the other officers interviewed denied hearing profanity.

An officer may use an expletive in a verbal command during a stressful street encounter to gain cooperation. NYPD v. White, OATH Index 78667/03 (encl. 0W-Z).

As noted in Allegation A, the officers in this case had reasonable fear for their safety when conducting the vehicle stop. Because they reasonably suspected that Mr. [REDACTED] and Mr. [REDACTED] had guns in the vehicle and had just committed a carjacking, the officers needed them to exit the van in order to minimize the threat to their safety. The statements they allegedly made in the context of this incident are therefore exonerable, as they would have been used to gain compliance from the civilians under possibly dangerous conditions.

The investigation determined that the alleged discourteous statements would have been a legitimate means of gaining compliance from Mr. [REDACTED] and Mr. [REDACTED]. It is therefore recommended that **Allegations B and C** be closed as **exonerated**.

**Allegation D – Abuse of Authority: Officer [REDACTED] threatened [REDACTED] and [REDACTED] with the use of force.**

Mr. [REDACTED] and Mr. [REDACTED] each alleged that Officer [REDACTED] approached their side of the vehicle while conducting the vehicle stop and threatened to "blow" their "fucking brains out." Each man alleged that the threat was made against himself, and neither stated that the other was threatened with force. It is undisputed that Officer [REDACTED] approached Mr. [REDACTED]'s on the driver's side of the vehicle, and that Officer [REDACTED] and Sergeant Schneider approached Mr. [REDACTED] on the passenger side.

Officer [REDACTED] denied making this threat to either individual, and the other officers interviewed denied hearing Officer [REDACTED] make this threat. Additionally, all of the officers' statements and Mr. [REDACTED]'s statement place Officer [REDACTED] on the driver's side of the vehicle during the approach in this incident. As all of these statements contradict Mr. [REDACTED]'s testimony that Officer [REDACTED] approached his side of the vehicle during the stop in this incident, this investigation will not credit Mr. [REDACTED]'s statement regarding this allegation.

There is sufficient evidence to determine that Officer [REDACTED] approached Mr. [REDACTED]'s side of the vehicle rather than Mr. [REDACTED]'s side. However, there is insufficient evidence to determine whether he made the threat, or whether it was directed at one or both of the individuals if it was in fact made. It is therefore recommended that **Allegation D** be closed as **unsubstantiated**.

**Allegation E: Sergeant Donald Schneider supervised the search of the car in which [REDACTED] and [REDACTED] were occupants.**

It is undisputed that [REDACTED]'s vehicle was searched by Officer [REDACTED] and Officer [REDACTED] after the civilians were removed from the vehicle.

In order to search a vehicle without consent, an officer must have probable cause to believe the vehicle contains weapons or contraband. People v. Smith, 2012 NY Slip Op 5934 (2<sup>nd</sup> Dept.) (encl. 0I-0II) Furtive movements inside a vehicle can prove justification for a limited search of

the vehicle to ensure that no weapons are present People v. Carvey, 89 N.Y. 2d 707 (1997). (encl. 0VI)

Sergeant Schneider stated that Mr. [REDACTED]’s vehicle was searched for the weapons used in the commission of the carjacking. The search was conducted based on the carjacking call and the fact that the civilians matched the description provided in the call. There were no other factors that led to the search of the vehicle.

According to Officer [REDACTED] he holstered his gun and handcuffed Mr. [REDACTED] while Mr. [REDACTED] was removed from the vehicle and handcuffed by other officers. Officer [REDACTED] confirmed that there were no other people in the vehicle after Mr. [REDACTED] exited the vehicle. Officer [REDACTED] stated that he then received permission from Mr. [REDACTED] to search the vehicle, and that the search was conducted by himself and Officer [REDACTED]. Officer [REDACTED] acknowledged participating in the search of the vehicle.

Although the officers had reasonable suspicion to stop the vehicle based on the vehicle’s description, the officers did not have probable cause to search the vehicle given that there was no furtive movement or suspicious behavior indicative of the presence of a weapon. The search of the vehicle in order to recover weapons was not an articulable basis for the officers to have feared for their safety during this incident for three key reasons. First, Mr. [REDACTED] and Mr. [REDACTED] had already been removed from the vehicle at the time the search was conducted, and they did not offer resistance. Second, Officer [REDACTED] stated that he ensured that there were no additional civilians in the vehicle prior to the search. Third, Officer [REDACTED] and Officer [REDACTED] both stated that they holstered their guns after handcuffing Mr. [REDACTED] and Mr. [REDACTED] indicating that their fear for their safety was reduced prior to the search of the vehicle. Had there been weapons inside the vehicle, this alone would not have been sufficient reason to search the vehicle as the weapons no longer posed an actual and specific danger to the officers’ safety.

There is sufficient evidence to determine that the officers in this case did not have an articulable basis to fear for their safety upon conducting the search of Mr. [REDACTED]’s vehicle. It is therefore recommended that **Allegation E** be closed as **substantiated**.

**Allegation F – Other: Sergeant Donald Schneider failed to ensure that stop-and-frisk reports were prepared as required by Patrol Guide Section 212-11.**

Officers [REDACTED] and [REDACTED] acknowledged supervising the stop of Mr. [REDACTED] and Mr. [REDACTED]. While Officer [REDACTED] stated that he prepared a stop-and-frisk report, there is no record of any stop-and-frisk reports filed for this incident.

According to the NYPD Patrol Guide, section 212-11, officers are required to “prepare Stop, Question and Frisk Report Worksheet for each person stopped” (encl. 0VII-0VIII).

Because the investigation determined that Sergeant Schneider failed to ensure that stop-and-frisk reports were prepared for this incident, it is recommended that he be cited for **other misconduct**.

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Team: 2

Investigator: \_\_\_\_\_  
Signature \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

Supervisor: \_\_\_\_\_

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Reviewer:	<hr/>	<hr/>	<hr/>
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